

St. Louis City Ordinance 64773

FLOOR SUBSTITUTE

BOARD BILL NO. [99] 190

INTRODUCED BY ALDERMAN FRANCIS G. SLAY, TERRY KENNEDY, DIONNE FLOWERS, FREEMAN BOSLEY, APRIL FORD-GRIFFIN, LEWIS REED, PHYLLIS YOUNG, KENNETH ORTMANN, MATTHEW VILLA, STEPHEN GREGALI, MICHAEL MCMILLAN, BENNICE JONES KING, KENNETH JONES, JAMES SONDERMANN, THOMAS BAUER, IRVING CLAY, PARRIE MAY

An ordinance pertaining to Cable Television and Cable Television Franchises; establishing comprehensive rules and regulations for the granting of Cable Television Franchises within the City of St. Louis, setting the Franchise Fees to be collected by the City of St. Louis: and containing a severability clause..

BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

SECTION ONE. Ordinance 58462, approved on December 18, 1981 , and codified in Chapter 8.29 of the Revised Code of the City of St. Louis; establishing comprehensive rules and regulations for the granting of Cable Television Franchises within the City of St. Louis and setting the Franchise Fees to be collected by the City of St. Louis is hereby as follows:

SECTION TWO. Section 2 of Ordinance 58462, approved on December 18, 1981, which is now codified as Section 8.29.020 of the Revised Code of the City of St. Louis, is hereby amended to read as follows:

8.29.020 Definitions.

For the purposes of this chapter, the following terms, phrases, words, and their derivations shall have the meaning given herein, unless the context clearly indicates that another meaning is intended. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

A. "Agency" means the person, department, commission, committee, or agency designated by the franchise authority, to act for it in administrative matters relating to cable television.

B. "Auxiliary services" means any communications service in addition to "regular subscriber services," including, but not limited to, pay TV, burglar alarm service, data transmission, facsimile service, home shopping service.

C. "Broadband Internet Access Transport Services" shall mean a Grantee's cable modem platform.

D. "Cable Television Services" shall have the same meaning as is set forth for the term "cable service" in 47 United States Code Section 522 (6) as that statute may now or hereafter exist.

E. "Cable television system" or "CATV system" shall have the same meaning as is set forth for the term "cable system" in 47 United States Code Section 522 (7) as that statute may now or hereafter exist.

F. "Channel" is a band of frequencies six megahertz wide in the electromagnetic spectrum capable of carrying either one audio-visual television signal and a few non-video signals or a large number of non-video signals.

G. "Federal Communications Commission," or "FCC" is the present federal agency of that name as constituted by the Communications Act of 1934, or any successor agency created by the United States Congress.

H. "Franchise" is an authorization granted by the franchise authority which permits the construction, operation and maintenance of a cable television system within the franchise area under the terms of this chapter.

I. "Franchise Area" means that area under the jurisdiction of the franchise entity for which a franchise is granted under the authority of this chapter. The franchise area may or may not be coterminous with the franchise entity.

J. "Franchise Authority" is the constituted board of aldermen of the city acting in its official capacity.

K. "Franchise entity" is the city as the same now exists as defined by its corporate boundaries and shall include any area henceforth added thereto during the terms of any franchise granted hereunder.

L. "Grantee" is a holder of a cable television franchise issued by the franchise entity.

M. "Regulations" - the franchise authority shall have the authority to adopt by ordinance such rules, regulations and procedures and other standards and methods of operation by franchisee as it deems necessary and in the public interest; all such shall be published in the city journal on two consecutive weeks and thereafter shall be in full force and effect upon publication.

N. "Cable Television Service Gross Revenue" means those revenues derived directly or indirectly by a grantee from the operation of the cable system to provide cable services, including, without limitation regular subscriber service, that is, the installation fees, disconnect and reconnect fees, and fees for regular cable benefits including the transmission of broadcast signals and access and origination channels if utilized; and, except as prohibited by law or as otherwise provided herein, revenues derived from auxiliary services or from any taxes collected from users, per program or per channel charges, leased channel revenues, revenues from Broadband Internet Access Transport Services, or any other income derived from the provision of cable service through the system.

O. "Internet" shall mean collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire and radio.

P. ❖ "Internet Service Provider" shall mean a person who provides a service that enables Subscribers or users to access content, information, electronic mail, or other services offered over the Internet.

Q. "Major stockholder" is a beneficial owner, directly or indirectly, of ten percent or more of the issued and outstanding voting stock of any corporation.

R. "Persons" are any people, firms, corporations, associations, or other legally recognized entities.

S. "Public street" is the surface and space above and below any public street, avenue, highway, boulevard, concourse, driveway, bridge, tunnel, park, parkway, waterway, dock, bulkhead, wharf, pier, alley, right-of-way, public utility easement, and any other public ground or water within or belonging to the franchise entity.

T. "Regular subscriber service" is that service regularly provided to all subscribers. It includes all broadcast signal carriage, FCC-required access channel carriage including origination programming. It does not include specialized programming for which a per-program or per-channel charge is made.

U. "Subscriber" means any person receiving any subscriber service.

V. "Minority group" means Blacks, Native Americans, persons of Hispanic Ancestry and persons of Asian Ancestry.

SECTION THREE. Section 6 of Ordinance 58462, approved on December 18, 1981, which is now codified as Section 8.29.060 of the Revised Code of the City of St. Louis, is hereby amended to read as follows:

8.29.060 Limitations of franchise.

A. Unless an exclusive franchise shall be expressly granted, any franchise granted under this chapter shall be non-exclusive and nothing herein shall be construed to prevent the franchise authority from granting identical or similar franchises or more than one person, within all or any portion of the franchise entity.

B. A grantee, shall at all times during the life of its franchise, be subject to the lawful exercise of the franchise entity's police power and such reasonable regulations as the franchise authority may subsequently promulgate thereunder. Nothing contained in this chapter shall be deemed to prohibit in any way the right of franchise entity to levy non-discriminatory occupational license taxes or any applicable tax authorized by state law on any activity conducted by grantee.

C. All privileges prescribed by such a franchise shall be subordinate to any prior lawful occupancy of the public streets, and the franchise authority reserves the right to reasonably designate where a grantee's facilities are to be placed within the public ways.

D. 1. A franchise shall be a privilege which is personal to the original grantee. It shall not be sold, transferred, leased, assigned, or disposed of, in whole or in part, either by sale, merger, consolidation or otherwise, without prior consent of the franchise authority expressed by ordinance and pursuant to an application for consent filed by the original grantee in writing with the franchise authority

not less than thirty days prior to the proposed date of the transfer, and then only under such conditions as may therein be prescribed by the franchise authority. Upon approval by the franchise authority the grantee may proceed to transfer its interest under the terms and conditions as submitted to the franchise authority. Any such transfer or assignment shall be made only by an instrument in writing, which shall include an acceptance of all terms and conditions of the franchise by transferee, a duly executed copy of which shall be filed with the agency within thirty days after any such transfer or assignment is complete.

2. Consent of the franchise authority shall not be granted until it has examined the proposed transferee's or assignee's legal, financial, technical, character and other qualifications to construct, operate and maintain a cable television system in the franchise entity and has afforded all interested parties notice and an opportunity to be heard on the question.

3. Consent of the franchise authority shall not be arbitrarily refused; provided, that the proposed assignee or transferee possesses the requisite qualifications and agrees, in writing, to comply with all provisions of the franchise and this chapter.

4. Transfer of ten percent or more of the voting securities of a corporate grantee to a person not presently a stockholder shall be deemed to be a transfer of control of the franchise which shall require consent of the franchise authority under this chapter.

5. No such consent shall be required for a transfer:

a. In trust; or of assets by mortgages or by other hypothecation, to secure an indebtedness;

b. To a parent or subsidiary of a corporate grantee; or

c. To a corporation whose stock is entirely held by the same stockholders as grantee;

d. Of less than twenty percent of the voting securities of a corporate grantee unless such transfer also results in a transfer of voting control;

e. Of stock from one present stockholder to another present stockholder unless such transfer also results in a transfer of voting control.

E. Nothing herein shall be deemed to in any way impair or affect the right of the franchise entity to acquire the property of the grantee, either by purchase or through the exercise of the right of eminent domain, at a price reflective of its fair market value as an ongoing concern, and nothing herein shall be construed to constitute a waiver or bar to the exercise of any governmental right or power of the franchise entity.

F. Any Grantee holding a franchise granted or renewed on or after the effective date of this ordinance shall provide non-discriminatory access to its Broadband Internet Access Transport Services for providers of Internet and on-line services, whether or not such providers are affiliated with the Grantee, unless otherwise required by applicable law. Such access shall be granted on rates, terms, and conditions that are at least as favorable as those on which the Grantee provides such access to itself or its Affiliates or to any other person. So long as cable modem services are deemed to be cable services, as provided under Title VI of the Communications Act of 1934, as amended, a Grantee shall comply with all requirements regarding such services, including but not limited to the inclusion of revenues from cable modem services and access within the Cable Television Service Gross Revenues of the Grantee's cable franchises, and commercial leased access requirements.

G. In addition to a Grantee's obligations to provide non-discriminatory access to its Broadband Internet Access Transport Services with regard to any franchise granted or renewed after the effective date of this ordinance, as set forth in subsection F. of this section, City shall have additional rights with respect to Grantee's provision of such non-discriminatory access as follows: At any time during the term of the Franchise, the City may amend the provisions of this ordinance to enact, additional or other non-discriminatory and open Internet access provisions requiring that the Grantee provide non-discriminatory access to its Broadband Internet Access Transport Services for any requesting Internet Service Provider, whether or not such provider is an Affiliate of the Grantee, if (a) any final order or judgment of a state or federal regulatory commission or court of competent jurisdiction upholds or affirms the authority of any local government to require a cable operator to provide non-discriminatory access to its Broadband Internet Access Transport Services for any requesting Internet Service Provider in addition to or beyond those provided for in this ordinance and (b) the City proposes to impose a provision or provisions substantially similar to those upheld or affirmed by the court. For the purposes of this section, an order or judgment shall be considered "final" when such order or judgment is not appealed or, if such judgment or order is

appealed, upon the final conclusion of such appeal upholding such order or judgment.

H. City's Right to Enforcement. In addition to any other penalties, remedies, or other enforcement measures provided by City, state, or federal law, this Ordinance may be enforced by the City including, without limitation, enforcement by injunctive relief.

I. Modification by State or Federal Law. If any of the provisions of this Ordinance, any related ordinance, or the Franchise pertaining to non-discriminatory access to Grantee's Broadband Internet Access Transport Services for any requesting Internet Service Provider are held by a court of competent jurisdiction to be invalid or conflicting with any applicable City, state, or federal law, rule or regulation now or hereafter in effect, then this Ordinance shall be modified or suspended in such a manner as to implement the intent of this Ordinance (including the intent to require the Grantee to provide non-discriminatory access to its Broadband Internet Access Transport Services for any requesting Internet Service Provider) to the fullest extent possible consistent with the requirements of any such law, rule or regulation. If this Ordinance cannot be modified or suspended in such a manner as to implement non-discriminatory access to Grantee's Broadband Internet Access Transport Services for any requesting Internet Service Provider, then this Ordinance shall be deemed null and void.

SECTION FOUR. Section 17 of Ordinance 58462, approved on December 18, 1981, which is now codified as Section 8.29.160 of the Revised Code of the City of St. Louis, is hereby amended to read as follows:

8.29.160 Payments to the franchise entity.

A. The grantee shall pay the franchise entity as a permit and administration fee constituting charges incidental to the awarding or enforcement of the franchise upon approval of the grantee's franchise, and for each year thereafter until commencement of services to subscribers, the sum of fifteen thousand dollars per annum.

B. From and after commencement of services to subscribers, the grantee shall pay to the franchise entity an annual sum equal to five percent of its Cable Television Services Gross Revenues derived from operation of its cable television system within the franchise area for the provision of cable television services, or such maximum percentage of said gross revenues as may be

allowed by the FCC Rules without the necessity of application and approval of the FCC, whichever sum is the greater. To the extent to which a Grantee provides telephone service, whether or not using the facilities of the cable system, it shall be subject as a telephone company to the business license taxes and fees applicable to telephone companies providing similar telephone services.

C. The grantee shall file with the treasurer and the franchise authority a quarterly statement showing the gross revenues derived from the operation of the franchised cable television system within the franchise entity during the three month period ending respectively on the last day of March, June, September and December of each calendar year. Said statements shall be filed not later than forty-five days after the close of the quarterly period to which they apply.

D. A quarterly installment payment required in paragraph B of the section shall be paid at the time of filing each statement required by paragraph C of this section and shall be submitted with said statements. Each such quarterly payment shall be in an amount equal to the portion of the annual payment which accrued during the quarter which is recorded in the statement.

E. The franchise entity shall have the right to inspect the grantee's records showing the gross revenues from which its franchise payments are computed, and shall also have the right of audit and recomputation of any and all amounts paid under this chapter. No acceptance of payment shall be construed as a release or as an accord and satisfaction of any claim the franchise entity may have for further or additional sums payable under this chapter or for the performance of any other obligation hereunder; however, an accounting rendered to the franchise entity and to which no exception is made within three years after receipt by the franchise entity shall be deemed to be accurate and shall not thereafter be subject to question or made the basis of any claim by franchise entity against grantee.

F. In the event that any payment required from the grantee under this section is not paid when due, there shall accrue to such debt, from and after the due date, interest at the maximum legal rate and penalties in the amount of one percent per month or any fraction of a month elapsed after the due date.

SECTION FIVE. SEVERABILITY.

The provisions of this ordinance shall be severable. In the event that any provision of this ordinance is found by a court of competent jurisdiction to be unconstitutional, the remaining provisions of this ordinance are valid unless the court finds the valid provisions of this ordinance are so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed that the Board of Aldermen would have enacted the valid provisions without the void ones or unless the Court finds that the valid provisions, standing alone, are incomplete and incapable of being executed in accordance with the legislative intent.

Legislative History				
1ST READING	REF TO COMM	COMMITTEE	COMM SUB	COMM AMEND
10/01/99	10/01/99	PU	10/14/99	
2ND READING	FLOOR AMEND	FLOOR SUB	PERFECTN	PASSAGE
10/15/99			10/29/99	10/29/99
ORDINANCE	VETOED		VETO OVR	
64773				